

MUNICIPAL YEAR 2019/2020 REPORT NO. 198

MEETING TITLE AND DATE

Cabinet: 12 February
2020

REPORT OF:

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Agenda – Part: 1

Item: 13

Subject: Housing Infrastructure Fund grant agreement to deliver strategic infrastructure works at Meridian Water

Wards: Upper Edmonton

Key Decision No: KD 5085

Cabinet Member consulted: Cllr Caliskan

1. EXECUTIVE SUMMARY

- 1.1. In early December 2018 the GLA submitted, on behalf of Enfield Council, a Housing Infrastructure funding application to Central Government for a total of £156m to build the strategic infrastructure works in Meridian Water. Confirmation that the Council's bid for funding had been successful was announced by the Chancellor of the Exchequer in August 2019.
- 1.2. The funding will unlock the delivery of thousands of new high-quality homes that meet the needs of local residents and jobs required for Meridian Water to grow as a thriving mixed-use community. Local communities will be primary beneficiaries of HIF strategic infrastructure;
 - 1.2.1. New pedestrian and cycle infrastructure will improve connectivity and have inevitable health and air quality benefits by encouraging carbon neutral modes of movement and link existing communities to the Lee Valley Regional Park.
 - 1.2.2. Decontamination of land, the creation of new parks, naturalisation of the Pymmes brook and wider flood mitigation measures will bring immense environmental and recreational value to residents and support wildlife.
 - 1.2.3. Rail improvements will increase the frequency of trains at Meridian Water Station and attract inward investment. Increased mobility and accessibility will transform resident's quality of life with better access to people, places, jobs, leisure and services.
- 1.3. This report seeks approval to enter into a grant agreement (GDA) with the Ministry for Housing, communities and Local Government (MHCLG). The Heads of Terms form the basis for the GDA and the Assurance framework sets out the funding process and establishes the approach to monitoring and evaluation.

- 1.4. The conditions of the GDA are not considered to be disproportionate to the scale and complexity of the project and do not unduly increase the Council's risk exposure.
- 1.5. Conditions are caveated with 'clawback' provisions, failure to comply with all conditions and milestones will result in termination of the grant agreement and clawback of funding already received.
- 1.6. It will be a condition of the grant agreement that all works are completed by March 2024. Any costs expended after that date, or above the £156m threshold, must be funded by the Council.

2. RECOMMENDATIONS

It is recommended that Cabinet:

- 2.1. Having regard to the conditions of the GDA and Assurance Framework issued by MHCLG (Appendix A and Appendix B appended to Part 2 of this report) authorises entering into the GDA for the receipt of funding.
- 2.2. Delegates authority to the Meridian Water Programme Director in consultation with the Executive Director of Resources and the Director of Law and Governance to finalise the terms of the funding agreement and all associated subsidiary documents.
- 2.3. Delegates authority to the Director of Law and Governance to enter into the grant agreement with MHCLG
- 2.4. Authorises drawdown of £19m preliminary works expenditure from the Capital Programme, such funding to be reimbursed from the HIF funding upon satisfaction of the funding conditions
- 2.5. Delegates authority to the Meridian Water Programme Director in consultation with the Leader to approve the preferred rail solution and procurement option for rail delivery, provided the costs of delivery will not exceed the level of grant funding made available to the Council.
- 2.6. Delegates authority to the Meridian Water Programme Director in consultation with the Director of Law and Governance to enter into agreements for additional grants associated with Meridian Water Infrastructure delivery.

3. BACKGROUND

- 3.1. The Housing Infrastructure Fund is a government capital grant programme from the Ministry for Housing, Communities and Local Government (MHCLG) aimed at unlocking housing sites and helping deliver new homes. The fund was split into two packages:
 - 1) Marginal Viability HIF (initially for schemes up to £10m)
 - 2) Forward Funding HIF (initially for schemes up to £250m)
- 3.2. In July 2018 Cabinet authorised the submission of a bid to MHCLG for £120m HIF Forward Funding to deliver strategic infrastructure works at Meridian Water; and delegated the authority to approve the contractor procurement for the HIF delivery works to the Programme Director of Meridian Water in consultation with the Director of Law and Governance (KD4711).
- 3.3. In early December 2018 the final funding application was submitted to MHCLG by the GLA on behalf of Enfield Council, after authority to submit was obtained from the Mayor of London and the Council's Executive Director of Place and the Executive Director of Resources.
- 3.4. The final funding application requested £156m of HIF forward funding, which is higher than the £120m funding bid amount approved by Cabinet in July 2018. The funding ask was increased under delegated authority from £120m to a £156m following a steer from MHCLG to increase the funding ask.
- 3.5. The scope of works proposed for HIF funding includes rail enhancement works amounting to a value of circa £40m and strategic road and flood alleviation works for a value amounting to circa £116m. These works are required as a first phase of strategic infrastructure to unlock housing delivery at Meridian Water.
- 3.6. In August 2019, MHCLG confirmed that the bid submitted by the GLA on behalf of the Council had been successful. Subject to Cabinet approval, the process to secure funding is as follows;
 - a) Complete the Heads of Terms (indicatively February 2020)
 - b) Complete and sign GDA (March 2020 – subject to satisfying all pre-contract conditions)
 - c) Drawdown for historic and preliminary costs (April 2020 subject to signing GDA)
 - d) Drawdown for actual work (indicatively October 2021)
 - e) Satisfy post contract conditions (ongoing)
- 3.7. MHCLG has agreed to enter into the GDA directly with the Council rather than via the GLA. The GDA is therefore to be established directly between the Council and MHCLG.

- 3.8. It will be a requirement of the GDA that all works must be completed before the delivery deadline of March 2024. To ensure timely delivery ahead of the funding deadline the following steps have been taken.

HIF onsite works (non-rail) progress to date

- 3.9. The HIF grant will be used to fund strategic roads and bridges, servicing and utilities infrastructure as well remediation, flood alleviation works and the creation of two parks. A planning application for these works was submitted in August 2019 and is due for determination at the March 2020 Planning Committee. To support the Planning application and ensure the Council meets the funding delivery deadline, the following has been commissioned:

- Site surveys
- Strategic transport modelling
- Local junction modelling for the highways impact
- Completion of strategic flood modelling and flood mitigation plan
- Design works for strategic infrastructure works including highways, utilities, parks, road bridges and public realm to RIBA stage 3+
- Environmental Impact Assessment
- Ground Investigation Works
- Draft sustainability strategy for the delivery of strategic infrastructure works

- 3.10. The procurement process to appoint a maximum of three contractors to a framework has commenced (KD 4782). This approach is suitable for the scope of works, given that the funding, the exact design and the land acquisition will not have been confirmed at the point of procurement. The framework approach allows the Council the flexibility to instruct specific works and services as and when they are required and doesn't commit the Council to instructing the individual works packages until a specific call-off contract has been signed

- 3.11. Three tier one contractors; BAM Nuttall, VINCI Construction UK, and VolkerFitzpatrick Limited, have progressed to the competitive dialogue stage of the procurement, which is currently in progress. Following conclusion of the competitive dialogue stage, bidders will be asked to submit their tender responses which will be evaluated. A report recommending the selection of a maximum of three contractors to the framework will be brought to Cabinet later in the year.

HIF rail progress to date

- 3.12. There are currently two HIF rail solutions being developed to meet the strategic rail objectives of the project which to deliver a minimum of 4 trains per hour, with a target of 6- 8 trains per hour. Both options have financial implications for the Council. See part 2 for more information.

3.13. **Progress to date on CPO for the delivery of the HIF works**

- 3.14. To progress the land acquisition for the sites required for the delivery HIF works the Council have conducted detailed land referencing into the areas of land required to deliver the HIF scope and identified ownership interests in the area.
- 3.15. In the first instance, the Council's strategy is to acquire land by private agreement. To date, the Council has acquired circa 35.5 hectares of land in Meridian Water by agreement, which comprises 73% of the developable area. Negotiations are progressing with parties to acquire the remaining interests required to deliver the HIF works.
- 3.16. In the event that acquisition by private agreement cannot be achieved, a Compulsory Purchase Order (CPO) (the Order) will be necessary to acquire the remaining land. The Order is also needed as a measure to cover unknown interests or unregistered land.
- 3.17. The authority report KD4832 approved by Cabinet in January 2020, authorises the commencement of a CPO for the delivery of Strategic Infrastructure Works. A draft Statement of Reasons in support of the proposed Order has been prepared in order to serve the relevant parties with required statutory notices.
- 3.18. Any Costs incurred by the Council in assembling land or making the CPO are not contained in the HIF bid and therefore are not recoverable as part of the funding.

Summary of draft Heads of Terms and funding conditions

- 3.19. The Commercial Heads of Terms are still in draft and being negotiated with MHCLG, the terms are intended capture the main provisions of the GDA. These include both standard conditions for all Forward Funding schemes as well as bespoke conditions for each project. Additional detailed provisions may be identified during the finalisation of the Heads of Terms and the GDA.
- 3.20. The HIF funding will be available for the period commencing on the satisfaction of the various conditions precedent until 31st March 2024. The conditions are grouped into three sections;
- Pre-contract conditions
 - Pre-works conditions
 - On-going Contractual monitoring obligations
- 3.21. If the Council fails to meet project milestones or does not comply with any conditions to be set out in the grant agreement, MHCLG may terminate the grant agreement, withhold additional funding and

potentially clawback any funding already paid. An overview of the conditions is as follows;

Pre-contract conditions

- 3.22. There are 17 pre-contract conditions to be complied with prior to signing the funding agreement with MHCLG. Pre-condition submissions have been made to MHCLG and include, but are not limited to, project information on governance arrangements, programme for infrastructure and housing delivery, financial model and land assembly approach.

At the time of this report, 16 pre-contract conditions have been satisfied, subject to MHCLG project board approval. Further information is being provided to MHCLG to satisfy the remaining condition related to Planning. Upon satisfaction of the pre-contract conditions and signing of the GDA the Council may claim for historic and preliminary costs.

Pre- works conditions

- 3.23. There are 16 pre-works conditions that must be complied with prior to the Council being able to drawdown funding from MHCLG for actual works. Most of the pre-works conditions relate to the delivery of HIF rail works. The timescales are ambitious for these conditions to be satisfied, therefore continued support and commitment from the rail stakeholders including Network Rail, Crossrail 2, Greater Anglia, Department for Transport (DfT) and Transport for London is critical as the rest of the HIF works (ie the non-rail works) will be impacted if any one of the pre-works conditions associated with rail cannot be satisfied.

- 3.24. At the time of this report, 9 of the pre-works conditions are to be agreed with MHCLG and the remainder are to be agreed with DfT. Upon satisfaction of the pre-works conditions, the first drawdown of monies for the actual works is targeted for Autumn 2021.

- 3.25. Additional on-going Contractual Monitoring obligations

There are 5 additional on-going Contractual Monitoring obligations to be met. These consist of quarterly update meetings to monitor progress on overall delivery and reporting on key topics such as housing delivery and planning.

MHCLG Assurance Framework and payment mechanisms

- 3.26. The Assurance Framework (AF) sets out the background to the Housing Infrastructure Funding process, how Local Authorities receive and utilise funding and establishes a robust approach to reporting and monitoring implementation. The framework provides assurance to MHCLG Officers that robust systems are in place to ensure funds are spent with regularity, propriety, and value for money, whilst achieving projected outcomes.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Do nothing

The £156m funding opportunity will be missed, and the Council will need to seek alternative sources of funding. This will significantly delay the delivery of much needed affordable homes for Enfield residents. The expenditure incurred to date by the Council will not be reimbursed by the government.

4.2 Further borrowing from government

Further borrowing from government will incur further finance costs to the project and could significantly impact on viability and therefore would compromise the provision of much needed affordable homes. The delay of securing alternative funding will add additional costs and could impact the overall viability of the scheme.

4.3 Council leaves infrastructure works to third party developers

There is significant risk of market failure as the substantial costs of infrastructure will deter private developers as was demonstrated during the aborted Master Developer procurement process.

5. REASONS FOR RECOMMENDATIONS

Up to £4.1bn of Forward Funding over the period 2017-2024 has been provisionally allocated from the Government's Housing Infrastructure Fund (HIF) to help unlock a strategic pipeline of housing delivery in England. Enfield Council is the first local authority in London to have been successful in the competitive bidding process. The funding will unlock the site for development, the £156m funding would deliver the following Strategic Infrastructure works;

- Rail infrastructure enhancement between Meridian Water Station and Tottenham Hale, to enable a higher-frequency service connecting to central London
- New roads, pedestrian/cycle links and bridges to improve east-west connectivity across the site will alleviate vehicular congestion, promote healthier and more sustainable modes of transport and improve access to the Lee Valley Regional Park
- Earthworks and remediation to address contamination and establish the appropriate development platform levels
- Flood alleviation and associated landscaping including the creation of two new parks and the naturalisation of Pymmes Brooks
- Demolition of existing buildings
- New utility infrastructure to support the development

Therefore, it is recommended that the Council takes this unique opportunity to accelerate the delivery of much needed homes and affordable homes for Enfield residents.

6. COMMENTS FROM OTHER DEPARTMENTS

6.1 Financial Implications

See part 2 report

6.2 Legal Implications

MD: 22nd January 2020

- 6.2.1 Section 1 of the Localism Act 2011 provides the Council with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the "general power of competence". A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. This general power of competence provides sufficient power for the Council to enter into a grant funding agreement with the Ministry of Housing Communities and Local Government.
- 6.2.2 As part of its funding application, the Council must satisfy itself that either State Aid is not relevant or, to the extent that State Aid may apply, consider what exemption might apply to infrastructure works that are proposed to be funded by the Housing Infrastructure Fund. The Council has obtained advice in this regard from its external legal advisers, Trowers & Hamlins LLP. The Council has been advised that demolition works, earthworks and remediation, rail enhancement works, the provision of vehicular roads and pedestrian and cycle links, flood alleviation and provision of utility infrastructure are likely to be regarded as non-economic activities and therefore not State Aid relevant. Further advice should be sought if any amount of the grant funding is to be used to fund the infrastructure necessary for the delivery of the Lee Valley Heat Network onto Meridian Water to ensure that such funding complies with General Block Exemption Regulation Article 46 (Investment aid for energy efficient district heating and cooling). In addition, further advice should be sought as the scheme develops, particularly in relation to the proposed structure for delivery of the rail enhancement works, to ensure that the funding is and continues to be state aid compliant. Generally, the position regarding state aid will be broadly similar to the current position following the United Kingdom's exit from the European Union.
- 6.2.3 As at the date of these legal implications, detailed terms and conditions of funding are not yet available from the Ministry of Housing Communities and Local Government. However, it is clear that the availability of funding will be contingent on satisfaction by the Council of certain conditions precedent to funding. Furthermore, the grant agreement will contain rights of termination in the event that the Council does not meet certain milestone dates for delivery, is unable to utilise all of the funding by 31st March 2024 or otherwise breaches the

conditions set out in the grant agreement. The grant agreement will contain provisions for the repayment of the funding in the event of termination of the Grant Agreement due to the default of the Council. The grant agreement is also likely to contain provisions which will seek to ringfence any enhanced land value attributable to the funding, ensuring that any uplift (to be capped at the level of HIF funding received) is allocated by the Council to the provision of future phases of infrastructure which unlocks additional housing. A detailed legal review and assessment of all the grant agreement terms will be undertaken upon receipt of the draft documentation.

6.2.4 Any project activity commenced, any contract entered into, or any expenditure incurred by the Council prior to entering into the grant agreement, and prior to receiving formal confirmation that any pre-conditions to funding have been met, is at the Council's own risk. The Ministry of Housing Communities and Local Government have indicated that, notwithstanding any pre-conditions to funding, historic and preliminary costs may be claimed by the Council upon entry into the grant agreement, subject to such amounts being specifically referenced in the Council's bid for funding and to appropriate evidence of expenditure being provided by the Council's Section 151 Officer. However, such funding may be "clawed back" in the event that the Council subsequently fails to meet any conditions to funding.

6.2.5 The Council must demonstrate that it has, or will at least obtain, the resources to implement the scheme referenced in the London Borough of Enfield (Meridian Water Strategic Infrastructure Works) Compulsory Purchase Order (CPO). It is proposed that funding for the strategic infrastructure works will be secured by way of the grant which is the subject matter of this report.

6.2.6 All legal agreements entered into in consequence of the approval of the recommendations set out in this report must be approved in advance of commencement by the Director of law and Governance.

6.3 Property Implications

The recommendations in this report do not have any property implications.

7. KEY RISKS

Risk: If Pre-contract conditions are not satisfied or there is delay to finalising the Heads of Terms, the Council is unable to sign the GDA and the Council would not be able to claim £26m historic and preliminary costs. Delays would make it difficult to meet the funding deadline of 31st March 2024 and ultimately the £156m funding would be at risk.

Mitigation: The Meridian Water team is working closely with MHCLG, DfT, GLA and wider stakeholders to progress the draft Heads of Terms and other contractual documentation so that all parties are comfortable

with the risks, obligations, requirements and conditions. Almost all pre-conditions have been satisfied subject to MCHLG Assurance board approval by March 2020. The Council is providing further information to MHCLG to satisfy a planning related condition. Any issues will be discussed at the appropriate stakeholder/ steering group meetings. In the event that the pre-contract conditions are not satisfied then the PCSA with the contractor will not be entered into and therefore only a proportion of the £26million monies spent. The costs that are incurred on preliminary works will not be abortive as the business case, design, planning, surveys and site investigation works for on-site works and rail are essential tasks required to unlock the full potential of Meridian Water.

Risk: If pre-works conditions are not satisfied; the full funding amount is at risk as the Council is unable to claim expenditure for actual works and the Government could claw back monies paid for historic and preliminary costs. The Council would also be unable to successfully appoint a main contractor or recover money paid to the contractor during the PCSA period.

Mitigation: The wording of the pre-works conditions is being finalised and the Meridian Water team is working closely with MCHLG and DfT to ensure all conditions can be satisfied. The Council could pause/abandon the contractor procurement if the pre-works conditions cannot be satisfied. The recommended procurement approach allows the Council the flexibility to instruct specific works and services as and when they are required and does not commit the Council to instructing the individual works packages until a specific call-off contract has been signed.

Risk: The Council fails to meet project milestones or complete works by the March 2024 deadline leading to termination of grant and claw back of amounts paid and the £156m funding would be at risk.

Mitigation: The Meridian Water team has already undertaken early market engagement with potential contractors to flag up any issues that could discourage bidders or cause risk pricing. Contractors have been shortlisted and the dialogue stage has commenced, overall the procurement is on track. Robust governance systems are in place to review issues, risks and programme. Reports will be produced in good time for internal sign off and cabinet sign off procedure, sign off timeframes are included in master programme. Risk reduction meetings will be held to consider ways to minimise change and delays to the project. The current programme estimates that the works will be completed in summer 2023 therefore allowing a significant amount of time before the deadline. The team will also explore alternative ways to finance works. In the event the deadline is at risk, it may be possible to discuss with MHCLG an extension to the 2024 deadline if required.

Risk: Delay selecting preferred rail solution. Pre-works conditions cannot be satisfied until a preferred rail solution is agreed. In this scenario MHCLG reserves the right to claim back all the monies paid to the Council including the payments associated with the delivery of HIF onsite works, and the full funding of £156m could be lost. The PCSA cannot be delayed if the programme is to remain on track for March 2024 completion deadline.

Mitigation: To manage the risks associated with the rail, weekly Rail steering group meetings are taking place as well as design team meetings to resolve issues and monitor project delivery. To manage the strategic risks associated with project delivery, the executive management team hold monthly meetings to monitor the delivery of the HIF and the monthly spend. The meetings are chaired by the Chief Executive of the Council.

Risk: The Council is exploring two rail options to deliver the target of 6- 8 trains per hour and a minimum of 4 trains per hour. Both Options have financial implications to the Council. Failure to meet any rail conditions and related milestones would impact the rest of the project and there is a risk the £156m funding would be lost.

Mitigation: The Council will seek to identify funding to cover any additional costs, it is also a possibility to investigate de-scoping the project. A report detailing the rail options will be brought back to Cabinet in summer 2020.

8. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD

8.1 Good homes in well-connected neighbourhoods

The recommendations in this report do provide the authority to start procuring a main contractor to finalise the strategic road infrastructure and flood alleviation works. The construction of these key pieces of infrastructure will unlock new housing development in Meridian Water.

8.2 Sustain strong and healthy communities

The scope of works does include several green spaces linking up with existing green spaces in the area and thereby enhancing the value of the local green infrastructure. Next design stages of the strategic infrastructure will give full consideration as to how the proposed works can contribute to the health and wellbeing of the existing and future communities in the area.

8.3 Build our local economy to create a thriving place

The delivery of strategic road and flood alleviation works will unlock the Meridian Water area and significantly increase accessibility of the site, especially by public transport. It is expected that increased accessibility

will support local businesses, as well as attract new jobs and business growth in the area supporting Enfield residents and the local economy.

9. EQUALITIES IMPACT IMPLICATIONS

It should be noted that projects or workstreams deriving from this may be subject to a separate Equalities Impact Assessment (EqIA). Therefore, any projects or workstreams will be assessed independently on its need to undertake an EqIA to ensure that the Council meets the Public Duty of the Equality Act 2010.

10. PERFORMANCE AND DATA IMPLICATIONS

Once the funding agreement is signed the performance will be monitored through the Government Assurance Framework.

11. HEALTH AND SAFETY IMPLICATIONS

The recommendations in this report do not have any health and safety implications. Pre-Construction Health and Safety Information will be included in the tender information for the appointment of contractors.

12. HR IMPLICATIONS

The recommendations in this report do not have HR implications

13. PUBLIC HEALTH IMPLICATIONS

Meridian Water is poorly connected by public transport, walking and cycling and although the site lies adjacent to the North Circular Road and Meridian Way, a strategic north-south route, the central and eastern part of the site have no direct connection to the proposed railway station, the most important piece of new infrastructure. The intervention proposed for the development should address these site constraints and design-in foundations to prioritise walking and cycling. The infrastructure designs should be grounded on an urban structure that improves the environment and to encourage healthy lifestyle. The utilities corridor should also be designed to provide specs for smart technologies, introduce suitable energy infrastructure to help residents save energy bills and improve air quality.

Appendices – to the part 2 report (exempt information)

Appendix A – Draft Pre-Drawdown conditions

Appendix B - MHCLG Assurance Framework for the Housing Infrastructure Fund – Forward Funding